

CHAPTER 24 SOLE SOURCE AND EMERGENCY PROCUREMENTS

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2400 GENERAL PROVISIONS

- 2400.1 In each instance where a contracting officer proposes to award a contract on a sole source or emergency basis, the contracting officer shall do the following:
- (a) Prepare a written determination and findings ("D&F") justifying the procurement which specifically demonstrates that competitive procurement is not required; and
 - (b) Ensure that all of the steps required under this chapter for the justification, documentation, and approval of the procurement are completed before the contract is awarded.
- 2400.2 Each contracting officer shall take reasonable steps to avoid using sole source procurement except in circumstances where it is both necessary and in the best interests of the Agency.
- 2400.3 Except as provided in §2407, a contracting officer shall take action, whenever possible, to avoid the need to continue to procure the same supplies or services without competition.
- 2400.4 The Director shall maintain a record listing all contracts entered into pursuant to this chapter for a minimum of five (5) years. The record shall contain the following:
- (a) The contract number;
 - (b) The name and address of each contractor;

- (c) The dollar amount of each contract;
- (d) The type of contract; and
- (e) A listing of the supplies or services procured under each contract.

2400.5 Each award of a contract valued at ten thousand dollars (\$10,000) or more on a sole source or emergency basis shall be publicized in the "*District of Columbia Procurement Digest*."

AUTHORITY: Unless otherwise noted, the authority for this chapter is §4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, D.C. Law 3-172, D.C. Code §2-2501 *et seq.* (1994 Repl. Vol.).

SOURCE: Final Rulemaking published at 36 DCR 6681, 6760 (September 22, 1989).

2401 SOLE SOURCE PROCUREMENT

2401.1 Procurement contracts may be awarded through negotiation without competition when the contracting officer determines in writing that one (1) of the following conditions exists:

- (a) There is only one (1) source for the required supply, service, or other item;
- (b) The contract is for the purchase of real property or interests in real property;
- (c) The contract is with a vendor that maintains a price agreement or schedule with any federal or District agency; Provided, that the contract with the Agency shall not authorize a price higher than the price allowed in the schedule or price agreement between the federal or District agency and the vendor for the same item;
- (d) The contract is for purchase of commodities, supplies, equipment, or services that would ordinarily be purchased on a competitive basis, but an emergency has been declared under this chapter and the emergency procurement procedures are followed; or
- (e) The contract is for the purchase of media time or space for advertising or promotion purposes and the procedures for purchase of media time or space under §2407 of this chapter have been followed.

2401.2 If the only justification for using sole source procurement is lack of sufficient time to complete a competitive procurement process, the contracting officer shall not award a contract on a sole source basis unless a legitimate emergency, as defined in this chapter, exists with respect to the need for the items or services being procured.

2401.3 Sole source procurement shall not be justified on the basis of any of the following circumstances:

- (a) The lack of adequate advance planning for the procurement of the required commodities, services, or other items;

(b) Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or

(c) Pending expiration of budget authority.

2401.4 Before negotiating a contract on a sole source basis, the contracting officer shall ensure that a D&F that justifies the procurement has been approved by the Executive Director in accordance with §2102 of Chapter 21 of this title.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6760 (September 22, 1989).

2402 SINGLE AVAILABLE SOURCE

2402.1 The contracting officer may award a contract using noncompetitive negotiation procedures upon making a determination that there is only one (1) available source for the required item.

2402.2 When determining whether there is only one (1) available source for a requirement, the contracting officer shall consider whether there is a reasonable basis to conclude that the Agency's minimum needs can only be satisfied by the supplies or services proposed to be procured, and whether the proposed sole source contractor is the only source capable of providing the required supplies or services.

2402.3 If the reason for making a procurement on a sole source basis is based on the particular source's ownership or control of limited rights in data, patent rights, copyrights, or trade secrets applicable to the required supplies or services, the written D&F shall clearly demonstrate the need for the specific supplies or services and that at least one (1) of the following factors applies:

(a) The requirements cannot be modified to allow procurement by competitive sealed bids or competitive sealed proposals; or

(b) It is in the best interests of the Agency to meet the identified requirements through procurement of the specific supplies or services, and that the proposed contractor is the only source for the specific supply or service.

2402.4 The contracting officer may determine that sole source negotiations are justified for the procurement of specific makes and models of technical equipment and parts if all of the following requirements are met:

(a) The specific technical equipment or parts are being procured for standardization purposes and that standardization of the equipment or parts is in the best interests of the Agency;

(b) The equipment or parts will be used to meet a requirement for replacement parts or additional units that are compatible with existing Agency equipment;

(c) The existing equipment for which the parts or additional units are being procured was obtained by the Agency through the use of competitive

procurement procedures, or was obtained through a separately justified and approved sole source procurement; and

- (d) No identical or compatible equipment or parts are available from any other source.

2402.5 Justification for a sole source procurement shall cover all of the supplies or services being procured under a single contract. The justification of the sole source procurement of some supplies or services shall not be used to avoid competitive procedures for obtaining other supplies or services which do not qualify for sole source procurement under the same contract.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6762 (September 22, 1989).

2403 SHELTERED MARKET PROCUREMENTS

2403.1 When a procurement has been designated for the sheltered market under D.C. Law 1-95, the "Minority Contracting Act of 1976" (D.C. Code §1-1141 *et seq.*) and only one (1) bid or proposal is received from a responsible, certified firm, the contracting officer shall not make an award to that proposed contractor unless the contracting officer determines that the proposed contractor qualifies as a sole source in accordance with this chapter, or the contracting officer follows the procurement procedures set forth in §§2403.2 through 2403.5.

2403.2 If the contracting officer cannot justify procuring the supplies or services from the single sheltered market vendor on a sole source basis, the contracting officer shall do one (1) of the following:

- (a) Cancel the Invitation for Bids ("IFS") or Request for Proposal ("RFP") and reissue the solicitation on the open market;
- (b) In the case of an IFS issued under Chapter 22, determine whether the bid price is competitive with the open market in accordance with the provisions of §§2403.3 through 2403.5; or
- (c) In the case of an RFP issued under Chapter 23, negotiate with the sheltered market vendor pursuant to §§2403.3 through 2403.5.

2403.3 If the contracting officer, using the methods and standards set forth in Chapter 23 of this title, is able to determine from price history or price analysis that the bid price offered on the IFS by the single sheltered market vendor is reasonably competitive with a price that might be obtained on the open market, the contracting officer may issue the contract after negotiation pursuant to §§2403.4 and 2403.5.

2403.4 Before attempting to negotiate a contract with the single sheltered market vendor under §2403.2, the contracting officer, using the methods and standards set forth in Chapter 23 of this title, shall establish a pre-negotiation position based on a reasonable price and other terms under which the contract might be let in the open market.

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- 2403.5 The contracting officer shall negotiate with the sheltered market vendor on the basis of competitive price and contract terms and may award the contract if the price and other terms agreeable to the vendor are reasonably within the range of price and terms that could be obtained in the open market, and if issuing the contract is in the best interests of the Agency.
- 2403.6 If the contracting officer is unable to negotiate a contract with the single sheltered market vendor on the basis of reasonably competitive price and terms, the contracting officer shall cancel the sheltered market solicitation and reissue the solicitation in the open market.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6763 (September 22, 1989).

2404 [RESERVED]

2405 SOLE SOURCE DETERMINATIONS AND FINDINGS

- 2405.1 When a sole source procurement is proposed, the contracting officer shall prepare a written D&F that sets forth the justification for the sole source procurement.
- 2405.2 Each sole source D&F shall include the following, when applicable:
- (a) Specific identification of the document as a sole source D&F;
 - (b) The nature or description of the proposed procurement;
 - (c) A description of the requirement, including the estimated value or cost;
 - (d) A specific citation to the applicable provisions of §2401 of this chapter that provide authority for the sole source procurement;
 - (e) An explanation of the unique nature of the procurement or other factors that qualify the requirement for sole source procurement;
 - (f) An explanation of the proposed contractor's unique qualifications or other factors that qualify the proposed contractor as a sole source for the procurement;
 - (g) A determination that the anticipated costs to the Agency will be fair and reasonable;
 - (h) A description of the market survey conducted and the results, or a statement of the reasons why a market survey was not conducted, and a list of the potential sources contacted by the contracting officer or which expressed, in writing, an interest in the procurement; and

- (i) Any other pertinent facts or reasons supporting the use of a sole source procurement.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6764 (September 22, 1989).

2406 SOLE SOURCE PROCUREMENT PROCEDURES

- 2406.1 The contracting officer shall not be required to publicize the solicitation for a procurement made on a sole source basis.
- 2406.2 The contracting officer may initiate negotiations for a sole source contract orally or may use a letter to request a proposal for a sole source procurement.
- 2406.3 If the contracting officer uses a letter to request a proposal for a sole source procurement, the contracting officer shall ensure that the letter is as clear and concise as possible and does not include unnecessary verbiage or notices. The letter shall only contain the for data and information necessary providing a proposal.
- 2406.4 The contracting officer shall comply with the applicable negotiation procedures in Chapter 23 of this title, except as specifically exempted in this chapter or where those procedures apply only to negotiation with more than one (1) source.
- 2406.5 The contracting officer shall ensure that each sole source contract contains all of the required clauses, representations, and certifications, in accordance with the requirements of this title.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6764 (September 22, 1989).

2407 PROCUREMENT OF MEDIA TIME AND SPACE

- 2407.1 The Director and each contracting officer engaged in the procurement of media time and space may make individual purchases of media time and space on a sole source basis, in accordance with the procedures set forth in this section.
- 2407.2 When there is only a single source for a particular type of media time or space (such as mass transit or display advertising space), the contracting officer shall purchase the time or space in accordance with the applicable marketing budget and marketing plan.
- 2407.3 When there are multiple sources for the purchase of media time or space (such as newspapers or broadcast media), the contracting officer shall use the following to allocate purchases among available media sources and to determine the amount of time or space to be purchased from each source selected:
 - (a) The strategic marketing plan developed for the specific media buying activity, including demographic and targeting variables, as well as the overall goals of the particular media campaign;

- (b) Marketing surveys, including information obtained from various media sources and market analysis sources;
- (c) Rates available from media sources, including rate variations based on factors such as broadcast time, audience demographics and market share, the availability of targeted time slots, and other relevant factors;
- (d) The overall budget for purchase of media time and space; and
- (e) Results obtained from prior advertising or promotion programs using particular media sources, targeting approaches, and other relevant factors affecting the effectiveness of media buying.

2407.4 To the extent that purchases of media time and space from local media sources are in the best interests of the Agency, a contracting officer may allocate media purchases to local media sources even though the allocations do not meet all of the requirements set forth in §2407.3.

2407.5 The contracting officer shall attempt to obtain the best price possible from each media source through price negotiation and other appropriate methods, such as obtaining rate discounts for package purchases, when in the best interests of the Agency.

2407.6 The contracting officer may use special contracting methods to obtain the best possible combination of media exposure and price, including blanket purchase agreements and indefinite quantity term contracts.

2407.7 The Director shall establish a quality control program for media purchases to ensure that the allocation of media purchases meet the goals of the Agency's marketing plan and that media advertisements and promotions are placed or broadcast in accordance with the specific contract or purchase order.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6765 (September 22, 1989).

2408-2409 [RESERVED]

2410 EMERGENCY PROCUREMENTS

2410.1 The Executive Director may approve a procurement on an emergency basis which does not otherwise comply with the requirements of this title if the procurement is essential to an Agency requirement to deal with an existing emergency condition, as defined in §2410.2, except that emergency procurements in excess of fifty thousand dollars (\$50,000) shall be approved by the Board in accordance with the provisions of §2100.5.

2410.2 For purposes of an emergency procurement under this chapter, an "emergency condition" is a situation (such as a flood, epidemic, riot, equipment failure, or other reason set forth in a proclamation issued by the Mayor or a written determination by the Executive Director) which creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies or services which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:

- (a) The health or safety of any person;
- (b) The preservation or protection of property; or
- (c) The continuation of necessary governmental functions.

2410.3 The justification for emergency procurement shall not be based solely on the internal operations of the Agency. In the absence of an emergency condition, an emergency procurement shall not be justified on the basis of any of the following circumstances:

- (a) The lack of adequate advance planning for the procurement of required supplies or services;
- (b) Delays in procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- (c) Pending expiration of budget authority.

2410.4 The emergency procurement of supplies or services shall be limited to quantities or a time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

2410.5 The emergency procurement of services shall be limited to a period of not more than one hundred twenty (120) days.

2410.6 If a long-term requirement for the supplies, services, or other items is anticipated, the contracting officer shall initiate a separate non-emergency procurement action as soon as possible after the emergency procurement is made.

2410.7 A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless a limited number of additional supplies, services, or other items are needed to fill an on-going emergency requirement until regular procurement action procedures can be completed.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6766 (September 22, 1989).

2411 EMERGENCY PROCUREMENT PROCEDURES

2411.1 The contracting officer shall not be required to publicize the solicitation of a procurement made on an emergency basis.

- 2411.2 The contracting officer shall attempt to solicit offers or proposals from as many potential contractors as possible under the emergency condition. An emergency procurement shall not be made on a sole source basis unless the emergency determination and findings includes justification for the sole source procurement.
- 2411.3 The contracting officer may use a letter or a verbal request to solicit proposals for an emergency procurement.
- 2411.4 If a letter request is used, the contracting officer shall ensure that the letter is as clear and concise as possible and does not include unnecessary verbiage or notices. A letter request shall only contain the data and information necessary for providing a proposal.
- 2411.5 The contracting officer shall comply with all applicable requirements for negotiation under Chapter 23 of this title except as specifically exempted in this chapter.
- 2411.6 The contracting officer shall ensure that each emergency procurement, contract contains all of the required clauses, representations, and certifications.
- 2411.7 The Director shall ensure that proper records of each emergency procurement are maintained.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6767 (September 22, 1989).

2412 EMERGENCY PROCUREMENT DETERMINATIONS AND FINDINGS

- 2412.1 When an emergency procurement is proposed, the contracting officer shall prepare a written D&F that sets forth the justification for the emergency procurement.
- 2412.2 Each emergency procurement D&F shall include the following:
- (a) An specific identification of the document as emergency procurement D&F;
 - (b) The nature or description of the proposed procurement action;
 - (c) A description of the emergency, including the nature of the threat to the public health, welfare, or safety, and the nature of the harm that might occur if the requirement were not met by emergency procurement;
 - (d) A description of the requirement, including the estimated value or cost;
 - (e) A description of the efforts made to ensure that proposals or offers are received from as many potential sources as possible under the circumstances, or a sole source justification;
 - (f) A determination that the anticipated costs to the agency will be fair and reasonable; and

- (g) Any other pertinent facts or reasons supporting the procurement on an emergency basis.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6768 (September 22, 1989).

2499 DEFINITIONS

- 2499.1 The definitions of terms and phrases set forth in §2099 of Chapter 20 shall apply to this chapter.